

REFERENCE TITLE: **materialmen's liens; surety bonds**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2474

Introduced by
Representatives Driggs, DeSimone, Senator Chevront: Representatives
Adams, Clark, Crandall, McClure, Nichols

AN ACT

**AMENDING SECTIONS 33-1004, 33-1051 AND 33-1062, ARIZONA REVISED STATUTES;
RELATING TO MECHANICS' AND MATERIALMEN'S LIENS.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 33-1004, Arizona Revised Statutes, is amended to
3 read:

4 33-1004. Discharge of mechanic's liens; bond; limitations of
5 actions; discharge of surety; judgment

6 A. After perfection of a lien pursuant to this article, an owner,
7 including any person who has a legal or equitable interest in the land which
8 is subject to the lien, a contractor, subcontractor, mortgagee or other lien
9 creditor, may, either before or after the commencement of an action to
10 foreclose such lien, cause to be recorded in the office of the county
11 recorder, in the county in which the land is located, a surety bond in the
12 form described in subsection B of this section, together with a power of
13 attorney disclosing the authority of the person executing the same on behalf
14 of the surety. Upon the recordation of such bond, the property shall be
15 discharged of such lien whether or not a copy of the bond is served upon the
16 claimant or he perfects his rights against the bond.

17 B. A surety bond to discharge a lien perfected under ~~the provisions of~~
18 this section shall be executed by the person seeking to discharge such lien,
19 as principal, and by a surety company or companies holding a certificate of
20 authority to transact surety business in this state, issued by the director
21 of the department of insurance pursuant to title 20, chapter 2, article 1.
22 The bond shall be for the sole protection of the claimant who perfected such
23 lien. Notwithstanding any other statute, the surety bond shall not be
24 executed by individual surety or sureties, even if the requirements of
25 section 7-101 are satisfied. The bond shall be in an amount equal to ~~one and~~
26 ~~one half times the claim~~ ONE HUNDRED FIFTY PER CENT OF THE DEMAND SET FORTH
27 IN AND secured by the NOTICE AND CLAIM OF lien and shall be conditioned for
28 the payment of the judgment which would have been rendered against the
29 property for the enforcement of the lien. The legal description of the
30 property and the docket and page of the lien sought to be discharged shall be
31 set forth in the bond.

32 C. The principal on such bond ~~shall~~, upon recordation thereof with the
33 county recorder, SHALL cause a copy of the bond to be served within a
34 reasonable time upon the lien claimant, and if a suit ~~be~~ IS then pending to
35 foreclose the lien, ~~THE~~ claimant ~~shall~~, within ninety days after receipt
36 thereof, ~~SHALL~~ cause proceedings to be instituted to add the surety and the
37 principal as parties to the lien foreclosure suit. IN ADDITION, ON RECORDING
38 AND SERVICE OF THE SURETY BOND, ANY MONIES WITHHELD IN RESPONSE TO A STOP
39 NOTICE OR BONDED STOP NOTICE THAT IS SERVED BY THE LIEN CLAIMANT PURSUANT TO
40 ARTICLE 9 OF THIS CHAPTER WITH RESPECT TO THE SAME LABOR AND MATERIAL
41 DESCRIBED IN THE NOTICE AND CLAIM OF LIEN SHALL BE RELEASED PROMPTLY.

42 D. The bond shall be discharged and the principal and sureties
43 released upon any of the following:

44 1. The failure of the lien claimant to commence a suit within the time
45 allowed pursuant to section 33-998.

1 2. Failure of the lien claimant to name the principal and sureties as
2 parties to the action seeking foreclosure of the lien if a copy of the bond
3 has been served upon claimant. If the bond is served upon the claimant
4 within less than ninety days from the date claimant would be required to
5 commence his action pursuant to section 33-998, ~~then~~ the claimant shall have
6 ninety days from the date he receives a copy of such bond to add the
7 principal and the sureties as parties to the lien foreclosure suit.

8 3. The dismissal of the foreclosure suit with prejudice as to the
9 claimant or the entry of judgment in such suit against claimant.

10 E. In an action to foreclose a lien under this article, where a bond
11 has been filed and served as provided herein, a judgment for the claimant on
12 the bond shall be against the principal and his sureties for the reasonable
13 value of the labor and material furnished and shall not be against the
14 property.

15 F. In the event a copy of the bond is not served upon the claimant as
16 provided in subsection C of this section, the claimant shall have six months
17 after the discovery of such bond to commence an action thereon, except that
18 no action may be commenced on such bond after two years from the date it was
19 recorded as provided in this section.

20 G. The county recorder of the county in which the bond and contract
21 are recorded shall index the bond and contract under the index classification
22 in which mechanics' and materialmen's liens are recorded.

23 Sec. 2. Section 33-1051, Arizona Revised Statutes, is amended to read:
24 33-1051. Definitions

25 In this article, unless the context otherwise requires:

26 1. "Bonded stop notice" means a stop notice that is given to any
27 construction lender and that is accompanied by a bond executed solely by one
28 or more surety companies authorized to transact surety business in this state
29 pursuant to title 20, chapter 2, article 1 in ~~the penal sum~~ AN AMOUNT equal
30 to one hundred ~~twenty-five~~ FIFTY per cent of the amount of the claim on the
31 condition that if the owner, original contractor or construction lender
32 recovers judgment in an action brought on a verified claim or on the lien
33 filed by the claimant, the claimant would have sufficient monies to pay all
34 costs and damages that the owner, original contractor or construction lender
35 may sustain by reason of the stop notice claim or the lien, not exceeding the
36 amount specified in the bond.

37 2. "Construction lender" means any mortgagee or beneficiary under a
38 deed of trust lending funds all or a portion of which defray the cost of the
39 construction, alteration, repair or improvement or any assignee or successor
40 in interest of either, or any escrow holder or other party holding any monies
41 furnished or to be furnished by the owner or any other person as a source
42 from which to pay construction costs.

43 3. "Original contractor" means any contractor who has a direct
44 contractual relationship with the owner.

